APPENDIX A

Memorandum Opinion and Order

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

No. 7981 Civil

JOSE A. REYES,

Plaintiff,

—vs.—

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, *et al.*,

Defendants.

The scope of the Court's review in a union disciplinary proceeding is limited to insuring that the union member received due process at the hands of the trial board. *Phillips* v. *Teamsters, Chauffeurs, etc., Local Union No. 560,* 309 F. Supp. 768, 771, 772 (1962). In most cases, if the procedural requirements of the Labor Management Reporting and Disclosure Act (LMRDA) are, in fact, met, the Court need look no further. Those standards are enumerated in *Section 101(a)(5)* of the Act. *29 U.S.C.A. § 411 (a) (1965).*

"Safeguards against improper disciplinary action. No member of any labor organization may be fined, sus-

pended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defenses; (C) afforded a full and fair hearing."

The Court finds that the trial board complied with these requirements. Due process under the LMRDA, however, as in other contexts, requires more than adherence to mere mechanical formalities. If the disciplinary proceeding has been instituted for the purpose of denying the member rights guaranteed to him by the Act, the Court may scrutinize the entire proceeding and the surrounding circumstances to determine whether the institution of charges was improperly motivated. *Gleason* v. *Chain Service Restaurant,* 300 F. Supp. 1241, 1259 (1969).

The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes. The Court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based was not feigned or imaginary.

The Court finds that the charge and disciplinary proceeding were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA.

The scope of free speech guaranteed to members under the Act is broader than that guaranteed by the Constitution. Congress made it so in order to permit vigorous debate on matters of union policy. *Salzhandler* v. *Caputo,* 316 F.2d 445 (1963). The right of free speech protected

by the Act does not, however, give a member license to advance his views by threatening physical harm to elected union officials. The charges and evidence adduced at trial show that Mr. Reyes was disciplined for threatening the union president and not for advocating his views.

IT IS, THEREFORE, ORDERED and ADJUDGED that the plaintiff take nothing by reason of his complaint in this cause and action, and the merits of the case having been decided in favor of the defendant and against the plaintiff,

IT IS FURTHER ORDERED and ADJUDGED that the complaint and this cause of action be, and the same are hereby, dismissed with prejudice.

DATED this 11th day of June, 1971.

H. VEARLE PAYNE
United States District Judge

APPENDIX B

Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

JUL 1972, TERM

No. 71-1607

JOSE A. REYES,

Plaintiff-Appellant,

—v.—

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16, *et al.*,

Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

(District Court No. 7981)

Leonard L. Pickering, Albuquerque, New Mexico, for Plaintiff-Appellant.

John Quinn, Santa Fe, New Mexico, for Defendants-Appellees.

Before PHILLIPS, HILL and BARRETT, United States Circuit Judges.

HILL, Circuit Judge.

This is an appeal from a judgment, after trial to the court in the District of New Mexico, denying appellant's requested relief based on his complaint that disciplinary action imposed upon him by Laborers International Union, Local 16 (Union) was in violation of rights guaranteed under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 401 *et seq.*

On appeal, Reyes asserts the trial court erroneously limited its review of the disciplinary proceeding to determining whether or not the union had complied with safeguards provided in 29 U.S.C. § 411(a)(5) against improper union disciplinary action. Additionally, appellant asserts error in the trial court's failure to consider his direct assault on the union's authority to impose the disciplinary sanction of three years' suspension from attending union meetings and a fine of $250. In attacking the judgment of the trial court, Reyes contends the court erred in its finding that he had been afforded a full and fair hearing by the union. He asserts this finding is not only unsupported by substantial evidence, but that it is contrary to the preponderant evidence. Reyes also contends the suit in the lower court was justified on the basis of his allegations of misreporting by the officers concerning the Union's financial matters. The trial court refused all of Reyes' requested relief and he now appeals also seeking recovery of attorney and accounting fees and costs.

The facts disclose that Reyes was an active and vocal member of the Union. He had previously opposed the Union management as a member of a slate of opposing candidates in a previous election which he lost and subsequently had set aside due to election irregularities. Reyes had also sent various letters to the Department of Labor,

United States senators and representatives, requesting investigations of the Union and alleging embezzlement and breach of fiduciary duties by the Union's officers. The incident giving rise to the charges and disciplinary action occurred on August 9, 1968. On that afternoon Reyes entered the Union meeting hall and challenged the Union president to fight him. He also threatened various other Union officials and was generally violent, profane and vulgar. That evening Reyes disrupted the Union meeting and caused it to be adjourned without ever having transacted any business. Charges were filed by the Union president against Reyes, and notice of the charges was mailed to Reyes on August 13, 1968. On August 20, 1968, Reyes requested the entire Executive Board be disqualified from participating in his hearing. A hearing was held September 14, 1968 before a Trial Board comprised of some of the members of the Executive Board, together with Fred Gardner, the International representative. After hearing testimony from both Ortega, the Union president whom Reyes had challenged, and Reyes, the Trial Board imposed the suspension and fine. On appeal to the General Executive Board of the Laborers' International Union, the fine was reduced to $100 and the three-year suspension was upheld. Reyes subsequently filed his complaint in the district court seeking further relief.

The trial court correctly interpreted its role in reviewing the union disciplinary proceeding. That court, when reviewing such disciplinary action is not free to substitute its judgment for that of the Union; it must uphold the Union's findings if supported by any evidence produced at the disciplinary trial conducted by an unbiased trial body which afforded a fair and impartial determination of guilt.[1]

---

[1] Burke v. International Bhd. of Boilermakers, 417 F.2d 1063 (9th Cir. 1969), *aff'g* 302 F. Supp. 1345 (N.D. Cal. 1967).

BLEED THROUGH POOR COPY

The trial court did not err in its self-imposed limitation on review, nor do we find error in its decision upholding the disciplinary sanctions imposed.

We further are not moved by appellant's argument that the suspension from attending meetings violated his rights as a Union member. Suspension is expressly recognized in 29 U.S.C. § 411(a)(5) as one of the disciplinary actions for which the procedural safeguards must be afforded. In Lewis v. American Fed'n of State Employees, 407 F.2d 1185 (3d Cir. 1969), *cert. denied,* 396 U.S. 866, reversing the trial court and upholding the decision of the union to expell one of its members, Judge Aldisert stated at 1193, "disciplinary provisions [of the Union constitution] which call for expulsion will be enforced so long as the constitutionally-mandated grounds for expulsion are not of themselves illegal as violating public policy . . ." We have not been apprised of any provision of the Union constitution which was violated by Reyes suspension.

Appellant lastly asserts his entitlement to costs and fees incurred in the accounting and in this action. Title 29 U.S.C. § 501(b) provides, *inter alia,* for the allocation of "a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit ... and ... and for any expenses necessarily paid or incurred by him in connection with the litigation." Recovery under the statute has not been restricted to a limited monetary recovery by the Union, but rather has included any benefit realized by the Union.[2] The record does not reflect any benefit conferred on the Union by the institution of the action by Reyes.

Affirmed.

---

[2] Bridge Workers Local 92 v. Norris, 383 F.2d 735 (5th Cir. 1967).

APPENDIX C

JULY TERM — SEPTEMBER 7, 1972

Before Honorable David T. Lewis, Chief Judge; and Honorable Orie L. Phillips, Honorable Delmas C. Hill, Honorable Oliver Seth, Honorable William J. Holloway, Jr., Honorable Robert H. McWilliams, Honorable James E. Barrett and Honorable William E. Doyle, Circuit Judges.

No. 71-1607

JOSE A. REYES,

Plaintiff-Appellant,

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION No. 16 and ELOY ORTEGA, President; *et al.*,

Defendants-Appellees.

This matter comes on for consideration of the petition for rehearing and suggestion for rehearing en banc filed by plaintiff-appellant in the captioned case.

Upon consideration whereof, the petition for rehearing is denied by Circuit Judges Phillips, Hill and Barrett, to whom the case was argued and submitted.

The petition for rehearing having been denied by the original panel to whom the case was argued and submitted and no member of the panel nor judge in regular active

service on the Court having requested that the Court be polled on rehearing en banc, Rule 35 (b), Federal Rules of Appellate Procedure, the suggestion for rehearing en banc is denied.

HOWARD K. PHILLIPS, *Clerk*

By HELEN R. BARETIA
Deputy Clerk.